Magespare @ Mageswary a/p Muthukrishnan v YB Dato' Anpalagan a/l Ramiah & Anor (Moses @ Moses Pillai a/l R Susayan & Anor, interveners)

HIGH COURT (KUALA LUMPUR) — GUAMAN SIVIL NO S1–22–398 OF 1999
JAMES FOONG J
24 APRIL 2008

Companies and Corporation — Winding up — Just and equitable grounds — Discretion to wind up not to be ordinarily exercised — Rights of all parties affected to be balanced — Companies Act 1965 s 218(1)

Partnership — Suit by and against partnership — Suit by partner against firm — Dispute over properties, monies and shares and allotment in companies incorporated in course of partnership business — Accounts — Dissolution of partnership — Whether ought to be granted

The plaintiff is and was at all material times an advocate and solicitor. In October 1992, she ventured out on her own and started a sole proprietorship firm. Before this, she was attached to another law firm where she came to know the first defendant, who was a client. At the time the plaintiff set up the said firm, the first defendant, though a businessman was studying law in Australia. Despite not being a qualified lawyer at that time, the first defendant, with the full agreement of the plaintiff, financed the said firm. This was done in anticipation of the first defendant joining the plaintiff as a partner when he qualified. It was also at this time the parties acquired a dominant company, the second defendant. The said company was to own the assets of the said firm and later the partnership. The plaintiff alleged that she paid into the second defendant all her earnings when she operated the said firm. The first defendant was called to the local Bar in April 1995 and immediately thereafter joined the plaintiff as a partner. The name of the said firm was changed to Ms Ramiah, Mages & Partners. The partnership agreement stated, inter alia, that the plaintiff was entitled to 40% of the profits and the first defendant to 60%. Further, the liabilities were to be apportioned according to this percentage. The partnership was however terminated with effect from 31 March 1999 by reasons of the willful and/or persistent breach of the terms of the partnership agreement by the first defendant. The plaintiff demanded from the first defendant a sum of RM8m as the amount due to the plaintiff by the first defendant from the partnership.

When this was not met, the plaintiff filed this suit. In this suit, the plaintiff accused the first defendant of breaching the partnership agreement. She also accused the first defendant of breaching his duty as a director of the second defendant. Then, she proceeded to claim reliefs from the second defendant for her contributions therein. The first defendant however, denied the plaintiff's claim and further counterclaimed for damages for breach of the partnership agreement.

Held, dismissing the claim and counterclaim with costs:

(1) The first defendant had not breached any of the terms in the partnership agreement. Thus, termination of this partnership under cl 24 of the partnership agreement could not be sustained. However, as the plaintiff had given notice of termination, a right she possessed under cl 23, the partnership was terminated under this provision (see para 95).

(2) The plaintiff had agreed to the formation of the second defendant from the very beginning, even before the first defendant joined her as a partner. As she had said, the purpose of the second defendant was to hold assets of the partnership in order to protect the partners. She could not now turn round and accuse the first defendant for agreeing to purchase assets with the partnership money when this had been previously agreed upon by the parties. She had to accept the reality and treat the two entities as separate (see para 90).

(3) The client's account of the partnership was audited each year in order to secure practicing certificates for both the partners as well as the legal assistants attached to the partnership. The auditors were satisfied with the partnership accounts and had issued certificates to this effect. There was never any complaint by the plaintiff of impropriety on the part of the first defendant regarding the operation of the partnership client's account to either the auditor or Bar Council (see para 75).

(4) Whatever money paid into or transferred to the second defendant from the partnership was duly accounted and was used for payment of shares in the second defendant to be issued to the plaintiff and the first defendant according to the proportion agreed upon by the parties (see para 82).

(5) In relation to the lifting of fixed deposits in the name of the second defendant without just cause, evidence showed that the money from these fixed deposit accounts were used to repay the second defendant's overdraft facilities. So, there was nothing sinister about this withdrawal. If the second defendant was encumbered with liabilities, then such liabilities should be settled particularly when the major directors and shareholders in the company were no longer on good terms. Further, in

view of the plaintiff terminating the partnership there was no longer any necessity for the second defendant to 'protect' the partners in the partnership for which the second defendant was acquired (see para 130).

(6) There was no reasonable ground to lift the corporate veil. The plaintiff was well aware of the objective for the setting up of the second defendant and went in with eyes wide open. She had used the second defendant to protect herself from personal liabilities when the need arose. Also, there must have been tax benefits enjoyed by her. Now just because she wished to rid the first defendant from any venture they share she was asking this court to revert back to status quo. The court would not lend her a hand when she was fully aware of the separate legal status of the second defendant before she went in and then used this to her advantage (see para 140).

[Bahasa Malaysia summary

Plaintif ketika ini pada sepanjang masa yang material adalah seorang peguambela dan peguamcara. Pada Oktober 1992, dia telah berusaha sendiri dan telah memulakan sebuah firma milikan tunggal. Sebelum ini, dia menyertai sebuah firma guaman yang lain di mana dia dapat mengenali defendan pertama, yang mana adalah seorang klien. Ketika plaintif memulakan firma tersebut, defendan pertama, adalah seorang peniaga yang mengikuti pengajian undang-undang di Australia. Walaupun masih belum menjadi seorang peguam yang berkelayakan ketika itu, defendan pertama, dengan persetujuan penuh plaintif, telah membiayai firma tersebut. Ini dilakukan dengan harapan defendan pertama menyertai plaintif sebagai rakan kongsi apabila dia layak. Pada ketika itu juga pihak-pihak memiliki sebuah syarikat yang dominan, iaitu defendan kedua. Syarikat tersebut memiliki aset-aset firma tersebut dan kemudiannya perkongsian tersebut. Plaintif mendakwa bahawa dia telah membayar kepada defendan kedua kesemua pendapatannya apabila dia mengendalikan firma tersebut. Defendan pertama telah didaftaraikan di dalam majlis peguam tempatan pada April 1995 dan sebaik sahaja selepas itu menyertai plaintif sebagai seorang rakan kongsi. Nama firma tersebut telah ditukar kepada Ms Ramiah, Mages & Partners. Perjanjian perkongsian yang menyatakan, antara lain, bahawa plaintif berhak kepada 40% daripada keuntungan dan defendan pertama sebanyak 60%. Selanjutnya, liabiliti juga dibahagikan mengikut peratusan tersebut. Walau bagaimanapun, perkongsian tersebut telah ditamatkan mulai 31 Mac 1999 atas sebab-sebab sukarela dan/atau perlanggaran terma-terma perjanjian perkongsian yang berterusan oleh defendan pertama. Plaintif menuntut daripada defendan pertama sejumlah RM8j sebagai jumlah yang sepatutnya diberikan kepada plaintif oleh defendan pertama daripada perkongsian tersebut. Apabila perkara tersebut tidak dipenuhi, plaintif memfailkan

tindakan ini. Dalam tindakan ini, plaintif menuduh defendan pertama melanggar perjanjian perkongsian. Dia juga menuduh defendan pertama memungkiri tanggungjawabnya sebagai seorang pengarah defendan kedua. Seterusnya, dia telah meneruskan dengan menuntut relief daripada defendan kedua bagi sumbangannya. Walau bagaimanapun, defendan pertama, menafikan tuntutan plaintif dan selanjutnya membuat tuntutan balas untuk ganti rugi bagi perlanggaran perjanjian perkongsian.

Diputuskan, menolak tuntutan dan tuntutan balas dengan kos:

(1) Defendan pertama tidak melanggar mana-mana terma di dalam perjanjian perkongsian. Oleh itu, penamatan perkongsian ini di bawah klausa 24 perjanjian perkongsian tidak dapat dikekalkan. Tetapi, oleh kerana plaintif telah memberikan notis penamatan, hak yang dimilikinya di bawah klausa 23, perkongsian tersebut telah ditamatkan di bawah peruntukan ini (lihat perenggan 95).

(2) Plaintif telah bersetuju kepada penubuhan defendan kedua sejak awal lagi, walaupun sebelum defendan pertama menyertainya sebagai seorang rakan kongsi. Seperti yang dikatakannya, tujuan defendan kedua adalah untuk memegang aset-aset perkongsian bagi melindungi rakan-rakan kongsi. Dia tidak boleh berpaling sekarang dan menuduh defendan pertama bagi persetujuannya membeli aset-aset dengan wang perkongsian apabila ini telah dipersetujui sebelumnya oleh pihak-pihak. Dia terpaksa menerima realiti dan menganggap dua entiti tersebut sebagai berasingan (lihat perenggan 90).

(3) Akaun klien perkongsian tersebut telah diaudit setiap tahun bagi menjamin sijil amalan bagi kedua-dua rakan kongsi begitu juga dengan pembantu perundangan yang menyertai dengan perkongsian tersebut. Juruaudit telah berpuas hati dengan akaun perkongsian dan telah mengeluarkan sijil sewajarnya. Tidak terdapat apa-apa aduan oleh plaintif berkenaan dengan ketidaktepatan oleh defendan pertama berkenaan dengan pengendalian akaun klien perkongsian tersebut sama ada kepada juruaudit atau Majlis Peguam (lihat perenggan 75).

(4) Apa-apa wang yang dibayar atau dipindahkan kepada defendan kedua daripada perkongsian tersebut telah dikira dan digunakan untuk pembayaran saham-saham di dalam defendan kedua untuk diterbitkan masing-masing kepada plaintif dan defendan pertama terhadap bahagian yang dipersetujui oleh pihak-pihak (lihat perenggan 82).

(5) Berkenaan dengan pengeluaran deposit tetap di atas nama defendan kedua tanpa alasan yang munasabah, bukti menunjukkan bahawa wang daripada akaun simpanan tetap ini adalah digunakan untuk membayar kemudahan overdraf defendan kedua. Oleh itu, tiada yang

mencurigakan berkenaan dengan pengeluaran ini. Jika defendan kedua terhalang dengan liabiliti, maka liabiliti-liabiliti tersebut seharusnya diselesaikan sewajarnya apabila pengarah-pengarah utama dan pemegang-pemegang saham di dalam syarikat tidak lagi dalam keadaan yang baik. Selanjutnya, mengambilkira plaintif yang menamatkan perkongsian tersebut tiada lagi keperluan bagi defendan kedua untuk 'melindungi' rakan kongsi di dalam perkongsian yang mana defendan kedua telah perolehi (lihat perenggan 130).

(6) Tiada sebab yang munasabah untuk mengangkat tirai korporat. Plaintif adalah sedia maklum bahawa objektif penubuhan defendan kedua untuk melindungi dirinya daripada liabiliti perseorangan apabila perlu. Juga, terdapat faedah percukaian yang dinikmati olehnya. Hanya kerana sekarang dia mahu mengenepikan defendan pertama daripada mana-mana usaha yang mereka kongsi, dia meminta mahkamah ini untuk mengembalikan semula status quo. Mahkamah tidak akan memberikannya pertolongan di mana dia sedia maklum status perundangan yang berlainan defendan kedua sebelum dia menyertainya dan menggunakan untuk kepentingannya (lihat perenggan 140).]

Notes

For a case on suit by partner against the firm, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) para 1049.

For cases on just and equitable grounds, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1166–1171.

Legislation referred to

Companies Act 1965 ss 181, 218(1)

Alahakone (Gunaseelan with her) (Alahakone & Associates) for the plaintiff.
Prasad Abraham (Prasad Abraham & Associates) for the first defendant.
M Manoharan (M Manoharan & Co) for the second defendant.

James Foong J (now JCA):

INTRODUCTION

[1] This claim is basically that of a disgruntled partner in a law firm, the plaintiff, against her former partner, the first defendant. However, since the partnership assets were held by a private limited company, the second defendant, the plaintiff is also seeking reliefs from this defendant. In addition, since the first defendant was a director of the second defendant the plaintiff is also making a claim against him in this capacity.

BACKGROUND

[2] To fully understand the plaintiff's claim, which is poorly presented both in pleadings and in evidence, I shall have to start with the background facts.

[3] The plaintiff is and was at all material times an advocate and solicitor. In October 1992, she ventured out on her own and started a sole proprietorship firm called Ms M Mages & Associates ('firm'). Before this, she was attached to another law firm where she came to know the first defendant, who was a client. At the time when the plaintiff set up the said firm, the first defendant, though a businessman was studying law in Australia. Despite not being a qualified lawyer at that time, the first defendant, with the full agreement of the plaintiff, financed the said firm. He paid for the said firm's renovation and introduced clients. According to the plaintiff, this was done in anticipation of the first defendant joining the plaintiff as a partner when he qualifies. It was also at this time the parties acquired a dominant company, the second defendant. It was to own the assets of the said firm and later the partnership. The objective of this exercise was, according to words of the plaintiff, 'to protect the interest of the partners of the legal firm'. According to the plaintiff, while she operated the said firm, she paid into the second defendant all her earnings.

[4] The first defendant was called to the local Bar in April 1995 and joined the plaintiff as a partner on 14 April 1995. The name of the said firm was changed to Ms Ramiah, Mages & Partners ('partnership'). There is a written partnership agreement to this effect. Expressly stated therein, the plaintiff is entitled to 40% of the profits and the first defendant to 60%. Liabilities were to be apportioned according to this percentage.

[5] The partnership existed till 23 March 1999 when the plaintiff gave a written notice to the first defendant to terminate the same with effect from 31 March 1999. The reasons cited are the first defendant had 'willfully and/or persistently breached the terms of the partnership agreement and so conducted yourself (himself) in matters relating to the partnership business and privileges and benefits normally enjoyed by a partner'. There was an attempt to settle this partnership dispute but failed. And on 26 April 1999, the plaintiff's solicitors by letter to the first defendant reiterated the termination of the partnership and demanded from the first defendant a sum of RM8m as the amount due to the plaintiff by the first defendant from the partnership. When this was not met, the plaintiff filed this suit.

[6] In this suit, the plaintiff accused the first defendant of breaching the partnership agreement. Not only this, she also accused the first defendant for breaching his duty as a director of the second defendant. Then, she proceeded to claim reliefs from the second defendant for her contributions in the second defendant. Since the plaintiff's claim is not properly categorised into specific causes of action, I have to set out what she has pleaded virtually in verbatim. I shall commence with her grievances against the first defendant in the

capacity as a partner, then as a director of the second defendant followed by her claim against the second defendant.

PARTICULARS OF BREACHES COMMITTED BY THE FIRST DEFENDANT

[7] In the statement of claim, the plaintiff has alleged that the first defendant had committed 32 breaches. They are:

(i) Refusing to give the plaintiff a copy of the partnership agreement despite repeated requests made by the plaintiff;

(ii) utilising monies from the said firm and the second defendant for his personal use/benefit;

(iii) excessive withdrawal/overdrawing of partnership monies from the said firm and from the second defendant;

(iv) obtaining personal and/or unfair advantages at the expense of the firm and the second defendant to the detriment of the plaintiff;

(v) deriving secret profits/benefits by reason of his connections with the said firm and the second defendant;

(vi) exclusive possession or use of the firm's property including property belonging to the second defendant;

(vii) converting property into personal property from the firm and the second defendant;

(viii) Refusing to render to the plaintiff a true account of all things affecting the said firm and the second defendant.

(ix) failing to render to the plaintiff true accounts of the said firm and the second defendant;

(x) failing and/or willfully refusing to carry on the business of the legal practice for the common advantage of both partners;

(xi) failing to display good faith towards the plaintiff in all the dealings and transactions pertaining to the firm and the second defendant;

(xii) breaching the trust the plaintiff had on the first defendant;

(xiii) retaining and converting the property and/or money belonging to the firm and the second defendant for his personal use;

(xiv) taking complete control of the management of funds of the firm and the said second defendant to the complete exclusion of the plaintiff as partner and equal shareholder of the second defendant;

(xv) misappropriation and/or mismanagement of monies and property belonging to the said firm and the second defendant;

(xvi) deliberately refusing to allow the plaintiff from enjoying the benefits and privileges normally enjoyed by a partner and director of a company;

(xvii) using his position as the managing partner of the firm and authorising the payment of monies to relatives and third parties from the firm and from the second defendant;

(xviii) interfering in the affairs of the plaintiff thereby preventing the plaintiff from discharging her duties properly as an advocate and solicitor and also as a master to chambering students;

(xix) refusing to allow the plaintiff time off to attend statutory meetings of the Bar Council and Bar Committee meetings;

(xx) showing total disrespect to the plaintiff as a partner and director of the firm and the second defendant respectively;

(xxi) conducting the affairs of the firm in total disregard of the rules and regulations set by the Bar Council especially with regard to the client's accounts and against the advice of the plaintiff;

(xxii) withholding the plaintiff's salary and allowances/drawings as a partner in the said firm and as a director of second defendant and thereby subjecting her to a financial disadvantage;

(xxiii) rejecting the plaintiffs application for leave, which she was legally entitled to;

(xxiv) insulting and humiliating the plaintiff in the presence of the staff of the said firm by using foul language whenever the plaintiff raised any objection in the conduct of the business of the firm and/or the affairs of the second defendant;

(xxv) using the firm's money to increase his shareholding in the second defendant in total disregard to the original agreement and understanding between the plaintiff and the first defendant;

(xxvi) using the firm's money to allot additional shares in the second defendant to two other persons, thus diluting the shares of the plaintiff;

(xxvii) appointing additional three persons namely Thelagam a/p Arumugam, Punkothai a/p Kannapathi Pilial and Moses @ Moses

Pillai a/l R Susayan as directors of the second defendant to outvote and overpower the plaintiff's rights and interests in the second defendant;

(xxviii) utilising all the monies from the firm to purchase moveable and immovable assets in the name of the second defendant so as to deny the plaintiff her share in monies earned by the firm;

(xxix) inducing the plaintiff to sign documents/directors' resolutions prepared on his instructions and subjecting the plaintiff into a position of fear/threat by reason of his position and authority if she refused to sign the same;

(xxx) instructing the company secretary to prepare all company resolutions to the exclusion of the plaintiff and to the detriment of the plaintiff;

(xxxi) withholding the plaintiff her right to her salary and/or drawings/profits as a partner, director and shareholder of M Mages & Associates, the firm and the second defendant from October 1992 up to April, 1999; and

(xxxii) refusing to pay the plaintiff her share of the monies due from the firm and the second defendant despite repeated requests by making promises to settle the same at a later date.

FURTHER ACCUSATIONS

[8] Proceeding further, the plaintiff accused the first defendant of writing letters to clients informing that she had ceased to be a partner as from 22 April 1999 and then changed the name of the partnership to 'Ms Ramiah, Moses & Partners' while still utilising the same premises and assets therein.

ACCUSATIONS IN RESPECT OF THE FIRST DEFENDANT'S ACTION IN THE SECOND DEFENDANT

[9] In the second defendant, the plaintiff complained that the first defendant had on 6 April 1999, in contravention of art 90 of the second defendant's articles of association, passed resolutions denying: (a) the plaintiff's share of the monies held in fixed deposits under the name of the second defendant in various banks; (b) giving notice of board meeting to dispose of assets of the second defendant.

ACCUSATIONS AGAINST THE SECOND DEFENDANT

[10] Aside from what is stated in para 7 above, the basis for the plaintiff's reliefs against the second defendant is grounded on the following paragraphs of her statement of claim:

20. The first defendant did on the 6 April 1999, in contravention of art 90 of the company's article of association of the second defendant passed resolution denying the plaintiff her share of the monies held in fixed deposit in various banks.

21. By another notice of a board meeting dated 26 May 1999, the first defendant intends to dispose assets belonging to the second defendant again with the sole intention of denying the plaintiff her share of the monies or assets in the second defendant.

22. The first defendant undertook all these transactions whilst giving a reply to the plaintiff's solicitors dated the 10 May, 1999 stating that he would reply to the solicitor's letter but never did with intention of buying time for himself to dispose all assets in the second defendant thus depriving the plaintiff of her legal entitlement to her share of the monies.

PARTICULARS OF DAMAGES

[11] As the result of the above, the plaintiff gave the following as particulars of damages suffered:

(1) loss of salary from October 1992 to April 1999;

(2) loss of earnings/drawings as a partner in the partnership from April 1995 to April 1999;

(3) loss of earnings/drawings as a director of second defendant from October 1992 to April 1999;

(4) loss of profits/dividends as an equal shareholder with the first defendant in the second defendant;

(5) damages for loss of goodwill as a result of the plaintiff having to terminate the partnership and starting a legal practice of her own after seven years;

(6) loss of future benefits as a result of the plaintiff having to leave the partnership due to the conduct of the first defendant;

(7) damages for being subjected to embarrassment and humiliation in the hands of the first defendant whilst being a partner of the partnership from April 1995 until April 1999;

(8) damages for breach of trust by the first defendant in the partnership and also as a shareholder and co-director of the second defendant;

(9) damages for having misappropriated and/or mismanaged the funds in the partnership as managing partner and also as a director of the second defendant;

(10) damages for abusing the position as managing partner of the partnership and as director of the second defendant;

(11) damages for misleading and failing to act in good faith as is required of a managing partner and co-director; and

(12) damages for acting in a manner unbecoming of an advocate and solicitor.

RELIEFS SOUGHT BY THE PLAINTIFF

[12] And for reliefs sought, the plaintiff prayed for the following:

As against the first defendant:

(a) a declaration that the firm of Ramiah, Mages & Partners has been dissolved as from 22 April 1999;

(b) an order that the affairs of the firm be wound up;

(c) for the purpose of the aforesaid that all necessary accounts and inquiries be taken and made;

(d) that the first defendant to pay the plaintiff damages, loss of earnings and all sums legally and equitably due to the plaintiff from the said firm;

(e) a declaration that the first defendant by himself, his servants or agents or otherwise be restrained from disposing the assets both movable and immovable which belong to the said firm and also to the second defendant;

(f) an injunction that the first defendant be restrained from acting in the capacity as managing partner and director of the second defendant to dispose or remove and/or abscond with the assets of the firm and the second defendant both movable and immovable until the plaintiff is duly compensated by the first defendant for the losses and damages and/or until the final disposal of this case;

(g) that the first defendant compensates the plaintiff for breach of fiduciary duty;

(h) that the first defendant indemnifies the plaintiff for all the losses the plaintiff suffered as a consequence of the misconduct of the first defendant as managing partner in the said firm and also a co-director and shareholder of the second defendant;

(i) the first defendant be ordered to pay damages for mismanagement and/or misappropriation of funds belonging to the said firm and second defendant; and

(j) the first defendant and/or his servant and/or agent be restrained from harassing, intimidating, punishing or attempting to harass, intimidate and/or punish the plaintiff her family and/or her friends by virtue of the first defendant being a 'Dato' and using his position to his advantage.

Against the second defendant:

(a) an injunction be passed to preserve the status quo of the second defendant pending the final disposal of the plaintiff's claim in court;

(b) a declaration that the dilution of the plaintiff's shares in the second defendant is an act of oppression on the part of the first defendant and all resolutions passed to this effect be set aside;

(c) the second defendant be ordered to compensate the plaintiff as equal shareholder upon the receivers and managers having taken account of all assets and liabilities of the said second defendant;

(d) in the alternative, the first defendant be held liable and be ordered to compensate the plaintiff as an equal shareholder upon the receivers and managers having taken account of all assets and liabilities of the second defendant by reason of having held himself out as the managing director and major shareholder of the second defendant;

(e) a declaration that the first defendant had acted mala fide in exercising his discretion as a co-director in the second defendant and be condemned to pay damages to the plaintiff;

(f) that the corporate veil of the second defendant be lifted and the second defendant be declared a partnership and is the alter-ego of the Ramiah, Mages & Partners. In the alternative, the second defendant be wound up on the ground that is just and equitable to do so;

(g) an order that the affairs of the second defendant be wound up; and

(h) for the purpose aforesaid, that all necessary accounts and inquires be taken and made.

Interest at the rate of 8% per annum to be paid by first defendant to the plaintiff on the judgment sum up to realisation once the damages and loss of earnings and claims are verified by the receivers and managers and this honourable court verifies the total amounts payable to the plaintiff by the defendants.

That first defendant defendants (sic) to bear the costs of this claim.

[13] Both defendants deny these claims and I shall elaborate on their defences when I deal with each of the plaintiff's claim in detail.

A COUNTERCLAIMS OF THE FIRST DEFENDANT

[14] Besides denying the plaintiff's claim, the first defendant counterclaimed the plaintiff for:

B (1) damages for breach of the partnership agreement with interest and costs;

(2) that the plaintiff do deliver 'a list of all client's correspondences and other documents, papers and record which may have been prepared by the plaintiff or have come into the plaintiff possession whilst the plaintiff was a partner of the first defendant'.

C

ANALYSIS IN RESPECT OF THE FIRST DEFENDANT

D **[15]** I shall approach this case according to the reliefs sought by the plaintiff.

(a) *A declaration that the partnership has been dissolved*

E **[16]** From the testimony of the plaintiff and the questions posed to various witnesses during cross-examination, as well as in some of the prayers for the reliefs sought (where the word 'firm' is sometimes used instead of the 'the said firm' which has been defined earlier in the pleadings as the partnership firm of Ramiah, Mages & Partners), I perceived that the plaintiff is attempting to F extend her claim against the first defendant even for the period before the formation of the partnership. This involves the time when the plaintiff was the sole proprietor of the said firm. I agree that the first defendant was financing the said firm but as he was not a qualified advocate and solicitor then he could not have been a partner nor had a share in the proceeds of the G said firm. It was against the law. So for this period, I am of the view that any claim by the plaintiff against the first defendant in respect of the operation and running of the said firm cannot be sustained.

[17] It is not in dispute that a partnership agreement was entered into H between the plaintiff and the first defendant. This deed contains terms and conditions governing dissolution of the partnership. It is therefore essential for me to examine the relevant terms relating to this.

[18] The pertinent clauses for dissolution of the partnership are as follows: I Clause 23 says:

RETIREMENT

Any Partner may retire from the Partnership on giving not less than three (3) months previous notice in writing to the other Partner expiring on the last day of any Financial year by delivering the notice at the premises of the Partnership addressed to the Partnership and date of expiration of such notice shall be his Succession Date but without prejudice to any provision in this Agreement entitling the other Partners to terminate the Partnership in respect of him or to expel him during the currency of the notice.

Clause 24 says:

EXPULSION

If any partner shall:

24.1 commit a serious breach of any provision of this Agreement resulting in the Partnership suffering a material disadvantage or

24.2 fail to account for money received by him in respect of any Partnership in writing to do so any sum owed by him to the Partnership

24.3 fail to pay the Partnership within thirty (30) days of being requested in writing to do so any sum owed by him to the Partnership

24.4 have no reasonable prospect of paying or be unable to pay his debts the amount or aggregate amount of which equals or exceeds the bankruptcy level or enter into a compromise for the benefit of his creditors generally or

24.5 be convicted of any criminal offence other than a minor motoring offence or

24.6 become a patient within the meaning of the Mental Disorder Act 1952

24.7 willfully neglect or refuse to perform whilst in management and/or control

24.8 do or suffer any act which would be grounds for dissolution of the Partnership by the courts then the other Partners (but if there are more than one) may convene a Partners meeting and having unanimously so resolved may at any time within three (3) months after becoming aware of such breach by notice in witting given to the Partner concerned expel him from the Partnership and the date of service of such notice shall be his Succession Date or to revise his position in the Partnership and his share of the profits of Partnership Business as they shall in their absolute discretion think fit.

[19] Obviously, judging by the complaints of the plaintiff against the first defendant, the appropriate provision to be used to terminate this partnership is cl 24. But the plaintiff did not abide by the procedure stated therein which required her to convene a meeting and issue notice to the first defendant within a specific time after becoming aware of the breach committed as well as giving the first defendant 30 days to refund any money taken from the partnership. But the first defendant did not seem to take issue on this. He equally desired to rid the plaintiff from the partnership. However, by denying that he was in breach of the partnership agreement, I believed that he would prefer to terminate the partnership under cl 23 rather than cl 24 and considered the notice given by the plaintiff to terminate the partnership, though short in time, as sufficient to put the partnership to an end. Since the first defendant has waived such formalities specified under cl 24 and challenged the plaintiff to prove that he had indeed breached the partnership agreement, I would have to examine each of the plaintiff's complaint to ascertain whether the partnership was terminated in accordance with cl 24. If these complaints are not proved then the partnership should be terminated under cl 23.

ALLEGATIONS OF BREACH

[20] For particulars of breach, the plaintiff has listed these in encl 107. I shall deal with each in turn.

(1) *Refusing to give a copy of the partnership agreement despite request*

[21] There is no provision in the partnership agreement to say that the first defendant is obliged to give a copy of this document to the plaintiff even upon request. This agreement was signed by the parties in 1995 and I accept the evidence of the first defendant that a copy was extended to the plaintiff after execution. Even if she did not retain a copy, she should have photocopied from the original which was kept in the safe before she decided to physically leave the partnership premises with no intention of returning. Based on these reasons, I do not find this complaint justified.

(2) *Utilising money of the partnership*

[22] The plaintiff has set out an exhaustive list of incidents to support this claim. I have examined them in detail and I come to the following observations:

(1) all sums of money taken are entered in the account books of the partnership;

(2) the person who entered them into the account books was the plaintiff;

(3) the first defendant was not the only one who signed the cheques for most of these payments. The plaintiff was the co-signatory of these cheques;

(4) most of these payments were made since the inception of the partnership. The plaintiff, having full knowledge of these payments, did not complain of these until this suit was filed;

(5) some of these payments were for credit cards and utility bills of the first defendant. But as the first defendant has explained, it was agreed that the partnership should be liable for such payments. This sounds reasonable as the first defendant was the one who brought in the major paying clients and increased the income of the partnership. This arrangement must have received consent from the plaintiff otherwise she would have either refused to sign the cheques for such payment or demanded repayment of these by the first defendant at that time. She nothing of the sort but continued for years to allow this to go by. This implies that she has agreed to these payments;

(6) the plaintiff has throughout maintained that she did not complain earlier for fear that the first defendant would be angry with her and would humiliate her. But this is strange when the plaintiff is an adult, a qualified advocate and solicitor and also, as she persistently maintain, an equal partner in the partnership. She could have left the partnership if she could not tolerate such treatment. But she did not. She gave the excuse that she had put in too many years into building the partnership and if she were to leave, all these would have gone to waste. Further, she said that she was advancing in age. But more truthfully is that each time when the first defendant was angry with her, he would subsequently make up to her. And she accepted such apologies. To me, all these are not reasonable grounds for not objecting to these drawings of the first defendant especially when it was perpetuated continuously over a long period of time. These only go to show that the plaintiff has consented to such payments. When the plaintiff has agreed to them, then the first defendant cannot be guilty of breach; and

(7) the partnership agreement also provides for each partner to draw from the partnership account in advance and then account for it subsequently. Thus, when such drawings are permitted, even if they were not agreed to by the plaintiff, the first defendant was not in breach for he was at liberty to take such advances.

[23] By these observations, I am of the opinion that this allegation of the plaintiff is without merit.

(3) *Excessive and over withdrawals*

[24] Here, the plaintiff alleged that these involved a number of motor vehicles. I shall deal with each in turn.

Vehicle No TM 1818

[25] This vehicle originally belonged to the first defendant who transferred it to the partnership. The partnership took a loan of RM36,000 to finance this purchase and repayment of this loans was by the partnership. After the loan was fully settled, the partnership transferred this car back to the first defendant.

[26] The first defendant admitted to these facts but explained that the loan taken by the partnership from the finance company was used to renovate the partnership office.

[27] It is my view that when this money was indeed used for the benefit of the partnership, then the first defendant committed no breach.

Vehicle No WDY 2962

[28] This vehicle belonged to the partnership was used at the material time by the plaintiff. After the loan for this car was settled, it was transferred to the first defendant's sister.

[29] The first defendant admitted this but said that the plaintiff consented to this arrangement.

[30] My view is that in a partnership, if one partner agrees to donate a gift to a third party and the other agrees then it is no breach.

Vehicle No WEP 131

[31] This car did not even belong to the partnership. It was owned by a client of the partnership who allowed the first defendant to enjoy it except that the partnership paid for the fuel to run this vehicle. Subsequently, in 2000 (after the plaintiff has left the partnership) it was transferred to the first defendant's wife.

[32] I cannot relate this to the complaint of the plaintiff. This car did not even belong to the partnership. Though the first defendant had sought reimbursement for the fuel charges in running this car but if this vehicle was

used by him for work connected with the partnership then he was fully entitled to do so. One just cannot be guilty of using a car belonging to another. Further, if the owner of this car elected to transfer it to the first defendant's wife after the plaintiff had left the partnership, he was at liberty to do so since it was his car and not the partnership's.

Vehicle No TW 1818

[33] This vehicle was purchased by the partnership. A loan of RM75,302.25 was taken to purchase it. It was used solely by the first defendant. This vehicle was subsequently sold to the second defendant for RM120,000. Later, the second defendant sold it to a relative of the first defendant.

[34] I find nothing sinister about this transaction. If the plaintiff wished to imply that the car was sold to a relative of the first defendant then she must take issue with the second defendant and adduce evidence that the sale was not at arm's length. But as far as the partnership is concerned, I do not think that this transaction justify a finding that the first defendant was guilty of over and excessive drawings from the partnership because of this.

[35] Now I move on to landed properties mentioned by the plaintiff to support this claim.

Property held under title No PN 6554 for Lot 388, Sek 6, District of Petaling Bandar, Petaling Jaya (commonly known as Jalan Gasing house)

[36] This house was supposed to be purchased by the partnership but with the full knowledge of the plaintiff a company known as Ramiah Valli Corp Sdn Bhd, which was controlled by the first defendant, bought it. Part of the money for this purchase came from the partnership client's account. The plaintiff claimed that she has a share of this money.

[37] The first defendant explained that he has deposited money into the client's account. This was his own money. He utilised this money towards part payment for this house.

[38] During cross-examination, the plaintiff admitted that the first defendant indeed had money standing to his credit in the partnership client's account. It is my view that if the first defendant had used his own money to pay for this property then the first defendant was not in breach.

Property in Malacca

[39] The plaintiff said that the partnership paid a sum of RM182,773

towards the purchase of this property. On 16 September 1998, the first defendant instructed the company secretary of the second defendant to capitalise this amount into 182,700 shares to be issued to himself.

[40] The first defendant explained that this property was purchased for RM430,000 by the second defendant. A sum of RM182,773 was paid by the partnership. This property was later disposed of by the second defendant for RM380,000 and after repaying the bank RM270,255.39 the balance was paid into the bank account of the second defendant. He had indeed requested the second defendant's company secretary to capitalise and issue 182,700 shares to the plaintiff and himself. This was duly carried out.

[41] I have perused the letter of request by the first defendant to the company secretary to issue 182,700 shares in the second defendant. This request is at p 89 of encl 101. It says that these shares were to be issued to the applicants (which included the plaintiff) and that the share certificates be given 'to the respective shareholders'.

[42] When this payment was capitalised in the second defendant and shares were issued to both the plaintiff and the first defendant in the proportion of their entitlement then the first defendant had committed no breach.

[43] The next item highlighted by the plaintiff was the excessive director's fees received by the first defendant from the second defendant.

[44] I am of the view that if she is unhappy over this, then she should direct her grievances to the second defendant rather than mixing this with the partnership. The second defendant is a legal entity of its own and once created should be treated separately from that of the partnership.

[45] I am aware that the plaintiff has requested this court to lift the corporate veil. But I do not think that the circumstances of this case justify it particularly when I find no fraud perpetuated. Here the plaintiff agreed to the acquisition of the second defendant to take over all the assets of the partnership. The objective of this is already disclosed in the earlier part of this judgment. When the second defendant agreed to this set up and formed a separate entity to protect herself from liabilities, she cannot just undo it in order to suit her fancy especially when she had benefitted from this set up. She has to accept reality and treat the two entities as separate.

[46] For this category of incident, the plaintiff has included the same complaint that the first defendant took money from the partnership account. I have already touched on this earlier and there is no necessity for me to repeat.

[47] In conclusion, I find no merit in this claim of the plaintiff.

(4) *Obtaining personal and unfair advantage at the expense of the partnership and the second defendant*

[48] The plaintiff is using the same materials that I have gone through to support this contention. On the same grounds as stated above, I am dismissing it.

(5) *Deriving secret profits/benefits by reason of the first defendant connection with the partnership and the second defendant*

[49] Again those incidents used to support this are already covered by me earlier.

(6) *Exclusive possession and use of partnership and the second defendant's properties*

[50] The properties used to support this claim are the same as those referred to by me above. In view of the circumstances as to how these were purchased and disposed, I find no merit in this plaintiff's contention.

(7) *Converting properties of the partnership and the second defendant to his own use*

[51] Again, based on the reasons above, I find no merit in this ground.

(8) *Refusing to render true accounts of all things affecting the plaintiff*

[52] I find no convincing evidence to support this allegation. All the accounts of the partnership were disclosed and, as provided in the partnership agreement, if there is any sum found due to either party after the taking of the final accounts then it should be repaid by the partner who has overdrawn. There is no evidence to support a finding that the first defendant had refused to render true accounts.

(9) *Failing to render true accounts of the partnership and the second defendant*

[53] In this allegation, the plaintiff complained that Bortim Sdn Bhd ('Bortim') was a client of the partnership. Bortim had ordered some colour prints from suppliers and the partnership paid for these. Bortim then remitted a sum of RM200,000 to the partnership client's account.

Subsequently, this was credited to the first defendant's personal account. The plaintiff accused the first defendant of pocketing this.

[54] The first defendant explained that Bortim had appointed him in his personal capacity to do some work for Bortim. The payment of RM200,000 was remuneration for such work. He was solely entitled to this sum paid out from the client's account.

[55] Having perused a letter from Bortim to the first defendant (found in annexure B of encl 108) I find that this matter falls within the grey area of whether the first defendant when rendering service to Bortim did it in his personal capacity or as a partner in the partnership. This is borne out by the contents of this letter of appointment which was addressed to the first defendant personally and the title says 'APPOINTMENT OF CORPORATE LEGAL ADVISOR & INTRODUCTION FEE FOR NEW BUSINESS OPPORTUNITIES'. Then the duties listed consist of:

(1) To attend board meeting by invitation.

(2) To provide corporate and legal advice.

(3) To lend support and provide management advice.

(4) To restructure the company with view of listing.

(5) To introduce new business opportunities for the betterment of the company.

[56] Then at the bottom of the page it says 'we will remit a sum of MTR200,000 to your firm's client account ...'

[57] But given the nature of the first defendant mode of operation where he combined business with professional work and the plaintiff having accepted this, it is more probable that this income was for payment of his business acumen and enterprise rather than for his legal professional output. Viewed from this angle, I find this complaint unsustainable.

[58] Aside from Bortim Sdn Bhd, the plaintiff also alleged that there were bills sent to clients after she left the partnership for work done during the term of the partnership. The first defendant confirmed these but explained that payments for such bills are yet to be received. It is my view that when payments are received for these bills, then the first defendant must account for them to the plaintiff. But the sending out of these bills does not make the first defendant guilty of breach.

(10) *Failing and/or willfully refusing to carry out the business of legal practice for the common advantage of both parties*

[59] This complaint is entirely without substances. After the partnership came into being, there was tremendous growth in the law business. As I have said, the first defendant had combined business with law practice and had successfully increased the income of the partnership. This was accepted by the plaintiff. Indication of this was her silence and non-protest from the time of the inception of the partnership till she quit. The other was the fact that she had signed cheques drawn from the partnership for payments connected with the first defendant's own enterprise. When she had consented to this she cannot now turn against the first defendant and accuse him of not concentrating on his legal practice.

(11) *Failing to display good faith towards the plaintiff in dealing with transactions pertaining to the partnership and the second defendant*

[60] I find no evidence to support this contention. In fact, the first defendant was rather open about his transactions. These are all reflected in the partnership account which was manned by the plaintiff.

[61] Under this item, the plaintiff has included the claim by the second defendant from her of a sum of RM162,487.57. This came about in this manner. After the plaintiff and the first defendant acquired the second defendant, the plaintiff transferred all her assets in the said firm to the second defendant. This included the lease to the premises occupied by the said firm. So instead of her renting directly from the landlord of the premises, she became a sub-tenant of the second defendant but at a higher rental. This was, I believed for tax purposes. As the said firm was not able, at the material time, to keep up with the payment of the rental to the second defendant, a sum of RM162,487.57 was accumulated as arrears. When the partnership was formed, she signed an acknowledgement of debt for this sum to the second defendant. This was never settled. Now, the second defendant has brought an action against her to recover this amount in the subordinate court and the case is pending the outcome of this case.

[62] Using this as a ground, the plaintiff accused the first defendant for failing to display good faith to her. She insisted that the second defendant should not have sued her for the amount acknowledged by her. But to me, this is entirely a separate matter. The claim in the sessions court against the plaintiff was made by a separate entity. The first defendant is not the sole director and shareholder of the second defendant. There are others, a matter

which i will be disclosing shortly. In view of this, I find this claim has no relevance to the allegation under review.

(12) *Breaching the trust the plaintiff had on the first defendant*

[63] As disclosed, there is a partnership agreement. This agreement regulates the conduct of the partners. Here the plaintiff alleged that the first defendant has breach the trust she had for him and listed out five incidents in encl 107 as support. I have touched on all them and I find them unsupportive of this plaintiff's claim.

(13) *Retaining and converting properties and monies belonging to the partnership and the second defendant for his personal use*

[64] All incidents used to support this claim are identical to most of those that I have covered previously. There is no necessity for me to go through each of them since I have given my views. On the last item stated in encl 107 relating to this claim which is the first defendant had increased his shareholding in the second defendant by using the partnership money, I find no evidence to support this. Whenever money or things from the partnership were transferred to the second defendant to be capitalised into shares, the plaintiff had received proportionate issues. If such share certificates were yet to be given to her, then she should take this up with the second defendant.

(14) *The first defendant took complete control of the management of funds of the partnership and the second defendant to the complete exclusion of the plaintiff*

[65] Evidence adduced in this case does not support this contention since the plaintiff was the co-signatory of all cheques issued by the partnership. I have no doubt that the first defendant was the more dominant partner but then this was by agreement. He held more shares than the plaintiff. But despite this, all expenditure of the partnership was approved by the plaintiff. As I have said, she co-signed the cheques.

(15) *Misappropriation and/or mismanagement of monies and properties belonging to the partnership and the second defendant*

[66] Again events used to support this are the same as those discussed earlier where I have dismissed them. There are also some other incidents included but I find them unconnected with the partnership. As they are irrelevant for this issue at hand, I will deal them at the appropriate time. But on those relevant matters, I find them to be without merit based on the reasons given earlier.

(16) *Deliberately refusing to allow the plaintiff from enjoying the benefits and privileges normally enjoyed by a partner and the second defendant*

[67] Here the plaintiff claimed that she received no profits from the partnership and her medical bills not paid. She also said that she was not allowed to go on leave.

[68] On the last event, I find this unbelievable. As I have said, she is not only an adult but also a qualified lawyer with a number of years standing. On top of this, she was a partner. Though not equal in percentage as the first defendant she still held a substantial 40% share. She could have insisted to go on leave and if not consented to then demand to know what arrangement is made. If no consensus was reached she could take issue on this and gave notice to terminate the partnership. But none of these were carried out. Now, after all these years of voluntarily submission she complained that the first defendant had ill treated her. As I said, this claim is probably untrue and even if true, on this aspect of leave, since she had consented to such arrangement she has no ground to complain.

[69] As for payment for medical bills, this depends on the agreement between the parties. If she was entitled, then she should claim or demand reimbursement from the partnership. The trouble is that she either never exerted her rights or agreed to forgo it.

[70] As for her entitlement to the profits of the partnership, the partnership agreement has provisions to cater for this. All that is necessary for her to do is to demand for her share when account of the partnership is taken. It is unfair to blame the first defendant for this when she made no claim for it.

(17) *The first defendant had used his position as managing partner of the partnership to pay his relatives*

[71] After examining the evidence, I find this assertion without merit. Payments allegedly for relatives were actually to employees of the partnership. Then there were payments made on behalf of one Dato Tik, the chairman of Hicom, which gave substantial amount of legal work to the partnership. The same goes with another by the name of Munusamy. These payments were to improve the goodwill of the partnership with its top clients. They were all made with the full knowledge of the plaintiff who co-signed the cheques for such payments. All these are reflected in the accounts. I do not think the first defendant derived any direct benefit from these payments. When these payments were for the benefit of the partnership, then the plaintiff as one of

the partners should have no reason to complain especially when she had consented to it.

(18) *Interfering in the affairs of the plaintiff thereby preventing her from discharging her duties properly as an advocate and solicitor and also as master for her chambering students*

[72] There is no evidence advanced by the plaintiff to support this contention. I therefore dismiss it for want of evidence in support.

(19) *Refusing the plaintiff time off to attend Bar Council meetings and Bar Committee meetings*

[73] This again is unbelievable considering the standing and maturity of the plaintiff. The first defendant may find such attendance unnecessary but I doubt he could physically prevent the plaintiff from attending if she had desired to do so.

(20) *Showing total disrespect to the plaintiff as a partner and director of the partnership and the second defendant*

[74] The first defendant may have been hard on the plaintiff at times but she forgave him. She had opportunity to give notice to terminate the partnership but she did not. When she chose to overlook such shortcomings of the first defendant then she should not complain.

(21) *Conducting the affairs of the partnership in total disregard to the rules and regulations set by the Bar Council especially with regards to the client's account against the advice of the plaintiff*

[75] The client's account of the partnership was audited each year in order to secure practicing certificate for both the partners as well as the legal assistants attached to the partnership. The auditors were satisfied with the partnership accounts and had issued certificates to this effect. There was never any complaint by the plaintiff of impropriety on the part of the first defendant regarding the operation of the partnership client's account to either the auditor or Bar Council. In the absence of this, I find this claim untrue.

(22) *Withholding the plaintiff's salary and allowance as a partner in the partnership and the second defendant thereby subjecting her to financial difficulties*

[76] Most of the particulars used to support this contention relate to the

non-payment of the plaintiffs director's fees by the second defendant. When this concerns the second defendant then the plaintiff should sought redress from the second defendant rather than blaming the first defendant for her woes. Obviously, she could not differentiate the second defendant from the first defendant.

[77] As to the plaintiff's complaint that she was not allowed to draw a salary from the partnership from the date of the commencement of the partnership until March of 1996, this was obviously by agreement between the parties. If the plaintiff had not been paid way back in 1996, the partnership would not have lasted this long. In my opinion, the plaintiff is estopped from using this as ground to support this claim.

[78] Under this category of complaint, the plaintiff has added that the first defendant had delayed reimbursing her for her car parking charges. Except for this statement found in encl 107, there is no evidence adduced to say that this was agreed upon by the parties. In the absent of this, I cannot find the first defendant guilty of breaching the partnership agreement just for this minor matter.

(23) *Rejecting the plaintiff's application for leave which she is legally entitled to*

[79] Under cl 21 of the partnership agreement each party is entitled to four weeks leave each year in addition to public and religious holidays 'as shall be individually agreed with the other partners from time to time and with their consent carry forward into the next calendar year his entitlement'.

[80] The plaintiff accused the first defendant for refusing to allow her to go on leave. But the aforesaid clause in the partnership agreement specifies that such leave must be by consent from the other partner. So even if the first defendant had refused her leave application, he was still within his right to do so. But the plaintiff was entitled to carry forward the balance of her leave to the following year. There is no evidence to indicate whether she had taken her accumulated leave for the following year or was she compensated with money in lieu of leave. Or perhaps, she had agreed to forgo her leave. In any event, she could have insisted on her rights but if she chose not to exercise them over such long period, she has only herself to blame.

(24) *Insulting and humiliating the plaintiff in the presence of the staff of the partnership by using foul language whenever the plaintiff raised any objection to the conduct of the business of the partnership and/or the affairs of the second defendant*

[81] Without doubt, the person who called the shots in the partnership was

the first defendant. He not only had the ability to bring in clients but was also able to improve the income of the partnership as compared to that of the plaintiff's sole proprietorship. Towards this, the plaintiff had showered him with deference. I believed that she was treated rather shabby by the first defendant during the tenure of the partnership but in my view, based on the facts as disclosed, she accepted this and forgave the first defendant. She herself admitted that the first defendant always made up to her. She even went on an overseas trip with the first defendant and his wife (or girl friend at that time) after one such abuse. The abuses were never physical, mainly emotional, like shouting at her in the office, excluding her from office lunches. Though she claimed to be severely affected by these but they were insufficient for her to proceed with the breaking up of the partnership. As stated, she gave the excuse that she was too old and had sacrificed a number of years in the venture to give up. However, I am of the view that this was not the real reason. I find that she did not leave because the takings and the benefits from the partnership were good. She would have tolerated the first defendant if not for the first defendant's attempt to introduce new partners (a matter which I shall be touching upon shortly) and to accommodate them reduced her shareholdings drastically. So this ground of complaint in my view is merely an excuse, like the many before cannot be substantiated.

(25) *Using partnership money to increase his shareholding in the second defendant in total disregard to the partnership agreement and the understanding between the parties*

[82] I do not detect such attempts by the first defendant. Whatever money paid into or transferred to the second defendant from the partnership were duly accounted and were used for payment of shares in the second defendant to be issued to the plaintiff and the first defendant respectively according to the proportion agreed upon by the parties.

(26) *Using partnership money to allot shares in the second defendant to two others*

[83] There is no dispute that shares in the second defendant were allotted to two other persons. I will be elaborating on this later. But there is no evidence that the payment for shares came from the partnership account.

(27) *Appointing three addition persons as partners in the partnership as well as directors of the second defendant in order to out vote and overpower the plaintiff's rights and interest in the partnership*

[84] In respect of this claim, the first defendant explained that at a partnership meeting held on 10 November 1997, two new potential partners,

Mr Moses ('Moses') and Ms Telagam ('Telagam') were appointed additional partners in the partnership. Minutes purportedly recorded at this meeting reveals that Moses and Telagam were accepted as partners with 15% and 10% percentage respectively in the partnership despite protest from the plaintiff whose shareholding was reduced from the original 40% to 15% to accommodate these newcomers. It is also recorded that this decision was made after the first defendant exercised his rights under cl 29 of the partnership agreement which says:

> Clause 29 deals with ADMISSION OF NEW PARTNERS.
>
> 29.1 A new partner may at any time be admitted into the Partnership upon such terms as may be determined by the First Partner full power in that behalf to vary the rights of the existing Partners so far as may be necessary or appropriate in connection with any such admission.
>
> 29.2 Without prejudice to the generality of the foregoing provisions of this clause where any new Partner or Partners is or admitted into the Partnership the First Partner shall have full power to decide upon reallocation of all the Partners' respective contributions to the capital of the Partnerships and their respective shares in the assets and profits of the Partnership.

[85] Subsequently, the first defendant claimed that he issued a notice to the plaintiff on 10 November 1997 announcing the admission of these new partners and their respective shareholdings in the partnership.

[86] The plaintiff denied the accuracy of this purported minutes and stressed that she did not receive the letter of the first defendant dated 10 November 1997. She claimed these were fabrications. To support this, she adduced a legal professional indemnity insurance certificate given to the partnership by the insurance company for coverage from 1 July 1997 to 30 June 1998. In this document, Telagam was listed as a legal assistant in the partnership and not a partner. In another similar sort of certificate for coverage from 1 July 1998 to 30 June 1999, both Telagam and Moses were listed as legal assistants in the partnership. Further, both Telagam and Moses had on 15 September 1998, made statutory declarations affirming they were legal assistants of the partnership at the material time. In addition, the audited accounts of the partnership for year ending 1998 continued to maintain the plaintiff's percentage in the partnership at 40%. Topping this, the plaintiff said that after the partnership was terminated by her notice of 23 March 1999, the first defendant applied to the Bar Council to change the name of the partnership. In this letter, the first defendant declared the new partners as Moses and Telagam. The plaintiff pointed out that if these two

had already been partners prior to this letter, they would not be described as newly admitted partners; they would be referred to as existing partners.

[87] To all these contradictions, the first defendant's only excuse was that the plaintiff, as managing partner of the partnership at the material time, should have attended to all these inaccuracies and put them right, a matter, obviously, she did not carry out.

[88] In view of the overwhelming contradictory evidence adduced by the plaintiff, I find that these new partners were not admitted before the plaintiff's letter of termination dated 23 March 1999. When no new partners were admitted to the partnership, then this claim of the plaintiff has no basis to stand on.

[89] As for the admission of new directors in the second defendant, these were approved by proper resolutions passed by the second defendant.

(28) *Utilising all monies from the partnership to purchase movable and immovable assets in the name of the second defendant so as to deny the plaintiff of her share in the money earned by the partnership*

[90] This claim is again based on similar grounds as discussed earlier. I find this totally unacceptable. The plaintiff had agreed to the formation of the second defendant from the very beginning, even before the first defendant joined her as a partner. As she has said, the purpose of the second defendant was to hold assets of the partnership in order to protect the partners. She cannot now turn round and accuse the first defendant of agreeing to purchase assets with the partnership money when this had been previously agreed upon by the parties.

(29) *Inducing the plaintiff to sign documents/directors' resolutions prepared on the first defendant's instructions and subjecting the plaintiff into a position of fear/threat by reason of his position and authority if she refused to sign the same*

[91] There is no necessity for me to repeat my reasons for rejecting this. They appear in my comments on the character of the plaintiff. All I need to add is that the plaintiff went into these with her eyes wide open and with full knowledge of her right to reject them if she so wished. She is, from my observation of her demeanor, not a person of weak character as she attempted to project to this court. She was well aware why she chose not to leave the partnership and the second defendant; it was certainly not out of fear or threat by the first defendant.

(30) *Instructing the company secretary of the second defendant to prepare resolutions to the exclusion of the plaintiff and to the detriment of the plaintiff*

[92] This matter has nothing to do with the partnership. I am surprised by this allegation since even accepting that the first defendant had given such instructions to the second defendant's company secretary, the plaintiff could refuse to sign the documents prepared. But based on evidence adduced, the plaintiff not only signed these documents but also executed, as a director of the second defendant, on share certificates issued to new shareholders.

(31) *Withholding the plaintiff's right to her salary and/or drawings/profits as a partner, director and shareholder of M Mages & Associates, the firm and the second defendant from October 1992 to April 1999*

[93] This ground is absolutely absurd with regards to the period when the plaintiff was the sole proprietor of the said firm. It was her own firm, and she could do whatever she likes with the funds in the account. The first defendant had no right over them.

(32) *Refusing to pay the plaintiff for her share of the monies due from the partnership and the second defendant despite repeated request to settle the same*

[94] This is a re-hatch of the previous grounds. There is no necessity for me to repeat my reasons for rejecting them.

Conclusion

[95] In conclusion with regard to this issue, I find as a fact that the first defendant had not breached any of the terms in the partnership agreement. Thus, termination of this partnership under cl 24 of the partnership agreement cannot be sustained. However, as the plaintiff has given notice of termination, a right she possessed under cl 23, I rule that the partnership is terminated under this provision. As I have said, there was short notice given to the first defendant for termination under this clause but since the first defendant did not take issue on this, I considered it waived and ceased to be an issue.

(b) *An order that the affairs of the partnership be wound up*

[96] Consequent to my ruling above, I allow this prayer.

(c) *For the purpose of the aforesaid, all necessary accounts and inquires be taken and made*

[97] Once the partnership is terminated, cl 25 of the partnership

agreement kicks in to deal with the affairs of the parties. As these provisions are applicable here, I reproduce it in its entirety.

TERMINATION

25.1 The provision of this Clause shall apply in respect of an Outgoing Partner (that is to say a Partner who ceases to be a Partner by reason of his death or bankruptcy or in accordance with any provisions of this Agreement) as at this Succession Date that is to say the date on which he ceases to be a Partner.

25.2 The provisions of this Clause shall apply in respect of an Outgoing Partner (that is to say a Partner who ceases to be a Partner by reason of his death or bankruptcy or in accordance with any provisions of this Agreement) as at his Succession Date that is to say the date on which he ceases to be a Partner.

25.2 The Outgoing Partner shall be entitled to his share of the profits for the Financial Year during which the Succession Date occurs apportioned for the period from the commencement of such Financial Year to the Succession Date.

25.3 The share of an Outgoing Partner in the capital and assets (including the goodwill and name of the Partnership business) and future profits of the Partnership as at the Succession Date shall vest in the Continuing Partners in the proportions in which they are then entitled to share in the profits (appropriately adjusted to exclude the Outgoing Partner for this purpose).

25.4 Termination accounts shall be prepared as at the Succession Date at the expense of the Partnership and consistent with the basis on which Partnership accounts have hitherto been prepared.

25.5 Any undrawn balance of the Outgoing Partner's share of the profits to the Succession Date shall be paid to him not later than three months from the Succession Date together with interest from the Succession Date at the Partners Interest Rate.

25.6 The Continuing Partners shall within three (3) months after the Succession Date pay to the Outgoing Partner a capital sum equal to the balance then standing to the credit of Outgoing Partner's capital account together with interest from the Succession Date. The Outgoing Partner shall not be entitled to any further capital payment in connection with his ceasing to be a Partner.

25.7 The liability of the Continuing Partners to make payments to the Outgoing Partner or his dependants under the terms of clause 25.6 and under the indemnities provided for in Clause 25.8 shall be joint and several but as between themselves every each payment and any such liabilities arising under such indemnities shall be borne by them in the propositions in which they are entitled to share.

25.8 The Continuing Partner shall keep the Outgoing Partner and his estate and effects indemnified from and against the amount of:

25.8.1 Any tax which the Outgoing Partner may be required to pay in respect of his share of the profits for the Financial year in which the Succession Date occurs and in excess of the Tax which would have been payable by him had he remained a Partner.

25.8.2 Any Tax suffered by the Outgoing Partner which he would not have suffered if he had not joined in making the election referred to in clause 25.8.1.

25.8.3 The Continuing Partner shall pay and discharge all debts and liabilities of the Partnership at the Succession Date except any debt or liability in respect of income tax attributable to the Outgoing Partner's share of the profits and except any debt or liability in respect of any claim arising from any negligent or wrongful act or omission of a Partner to the extent that such claim is not covered by insurance and shall keep the Outgoing Partner indemnified from and against such debts and liabilities except as aforesaid and all actions proceedings costs claims and demands in respect thereof provided that nothing in this Deed shall be construed so as to remove any lien that the Outgoing Partner may at any time had over the Partnership.

25.8.4 The Outgoing Partner shall on or before his Succession Date deliver up to the Continuing Partners lists of clients correspondence and all other documents papers and records (in whatever form these may be stored) which may have been prepared by him or have come into his possession while he was a Partner and the Outgoing Partner shall not retain copies of them.

[98] For this relief, I shall begin by stating that there is no outgoing and continuing partner. Both parties in this suit are considered as outgoing partners.

[99] As it was necessary for the parties to obtain practicing certificates from the Bar Council during the term of the partnership, the accounts of the partnership were not only drawn up but were also audited. This covers the period from 1995 to 1998. The auditor was Ms Yeo & Co. After the plaintiff has terminated the partnership, the first defendant tendered to the plaintiff a termination account and this covers the period from 1 January 1999 to 22 April 1999 (until the ruling by this court that the partnership was terminated on 31 March 1999; prior to this both parties seem to accept termination to be effective on 22 April 1999). In 1991, a court appointed firm of accountants Ms Aljeffery & Co ('Aljeffery') was requested to examine the accounts of the partnership. Aljeffery prepared a set of financial statements of the partnership from 1995 to 22 April 1999. The source or input of these statements was from documents showing monies paid into and out of the partnership bank accounts. Aljeffery listed out a number of discrepancies in the partnership audited accounts. They queried Yeo & Co Yeo & Co then re-examined their audited accounts against accounts books of the then partnership. They discovered that these books were amended and auditing ticks put in by them on entries in these books missing. Their representative then explained that 'since the entries in the books are different from the time we did the audit, we did not proceed further. Subsequent documents given to us were different from the time when we did the audit'. On this score, the queries of the Aljeffery were left unanswered.

[100] In view of this situation, it is my opinion that the figures in Aljeffery's accounts on items raised in their queries to Yeo & Co should be adopted as the correct amount representing the entries in the audited account of the partnership for the entire period from 1995 to 22 April 1999 with some adjustments to revert it to 31 March 1999. Based on these accounts, the parties should adopt what is set out under cl 25 of the partnership agreement to settle the accounts based the share entitlement of 60% to the first defendant and 40% to the plaintiff.

[101] The settlement of the account must take into consideration what I have said in this judgment. For this exercise, I direct the SAR of the High Court to carry out and if any money found due to the plaintiff by the first defendant, it is herby ordered that the first defendant do make payment to the plaintiff within 30 days from date of the decision of the SAR.

(d) *That the first defendant to pay the plaintiff damages, loss of earnings and all sums legally and equitably due to the plaintiff from the partnership*

[102] Except for what I have ordered in prayer (c) above, other requests contained in the prayer are refused.

(e) *A declaration that the first defendant by himself, his servant or agent or otherwise be restrained from disposing the assets both movable and immovable which belonged to the said partnership and also the second defendant*

[103] Evidence reveals that all assets of the partnership are owned by the second defendant. In view of events (which I shall be disclosing later) having overtaken this request, I make no order for this prayer.

(f) *An injunction that the first defendant be restrained from acting in the capacity as managing partner and director of the second defendant to dispose or remove and/or abscond with the assets of the firm and the second defendant both movable and immovable until the plaintiff is duly compensated by the first defendant for the losses and damages and/or until the final disposal of this case*

[104] Again for the same reason given in prayer (e) above, this request has become irrelevant. Thus, I make no order for this prayer.

(g) *That the first defendant compensates the plaintiff for breach of fiduciary duty*

[105] Based on the reasons I have expressed in this judgment this far, I find that the first defendant has committed no such breach.

[106] This request is refused.

(h) *That the first defendant indemnifies the plaintiff for all the losses the plaintiff suffered as a consequence of the misconduct of the first defendant as managing partner in the said firm and also a co-director and shareholder of the second defendant*

[107] As there was no misconduct by the first defendant in the partnership and that all resolutions of the second defendant were properly passed and approved by the plaintiff, this prayer is refused

(i) *The first defendant be ordered to pay damages for mismanagement and/or misappropriation of funds belonging to the said firm and the second defendant*

[108] For the same reasons above, this prayer is refused.

(j) *The first defendant and/or his servant and/or agent be restrained from harassing, intimidating, punishing or attempting to harass, intimidate and/or punish the plaintiff her family and/or her friends by virtue of the first defendant being a 'Dato' and using his position to his advantage*

[109] As there is no evidence advanced by the plaintiff to support this claim, it is hereby refused.

(a) *Against the second defendant: (i) An injunction be passed to preserve the status quo of the second defendant pending the final disposal of the plaintiff's claim in court*

[110] In respect of this prayer, both parties have informed me that it is academic. Accordingly, I make no order on it.

(b) *Against the second defendant: (ii) A declaration that the dilution of the plaintiff's shares in the second defendant is an act of oppression on the part of the first defendant and all Resolutions passed to this effect be set aside*

[111] Again since both parties informed me that this prayer is also academic, I make no order on it.

(c) *Against the second defendant: (iii) The second defendant be ordered to compensate the plaintiff as equal shareholder upon the receivers and managers having taken account of all assets and liabilities of the said second defendant*

[112] The plaintiff has not submitted to this court by which provision of

the law is this request made for the appointment of a receiver and manager for the second defendant. The second- defendant is not wound up nor is there any debenture issued by the second defendant in favour of the plaintiff to entitle her to appoint a receiver and manager for the second defendant. Accordingly, this prayer is refused.

(d) *In the alternative, the first defendant be held liable and be ordered to compensate the plaintiff as an equal shareholder upon the receivers and managers having taken account of all assets and liabilities of the second defendant by reason of having held himself out as the managing director and major shareholder of the second defendant*

[113] As the second defendant is a separate legal entity, I fail to understand why the first defendant should compensate the plaintiff just because he is the managing director and a major shareholder of the second defendant.

[114] In any event, it is also appropriate here for me to discuss the complaint of the plaintiff against the first defendant for his role in the second defendant.

[115] The grievances of the plaintiff's against the first defendant as a director of the second defendant are numerous. I shall deal with each in turn. But before I do so, it is necessary for me to reiterate the relationship between the second defendant with the parties.

[116] As previously disclosed, the second defendant was acquired by the plaintiff and the first defendant for the purpose of holding assets. Aside from this, it was for tax relief.

[117] Later, when the partnership came into effect, the plaintiff transferred her movable assets in the said firm to the second defendant to be capitalised into shares. This is reflected in the annexure to the partnership agreement.

[118] But even before this, soon after the second defendant was acquired by the first defendant and the plaintiff, shares in the second defendant were issued to the parties. It was never equal. On 7 January 1993, 9,210 shares were issued to the first defendant and 4,010 shares to the plaintiff. Then a few days later, in another allotment on 20 January 1993, the first defendant received 11,700 shares and the plaintiff 6,700 shares. From time to time monies from the partnership were injected into the second defendant including sometimes expenses incurred by the first defendant to be capitalised into shares.

[119] The directors of the second defendant were not without benefits. They were paid director's fees and the plaintiff also enjoyed her house and car being repaired with the second defendant footing the bills.

[120] The second defendant accounts were audited since 1993. The plaintiff does not dispute the accuracy of the second defendant's audited accounts from 1993 to 1996 but took issue on those from 1997 to 1999. This was because Aljeffery had prepared a statement of accounts for these years based on documents showing 'actual pay in and out of bank' and nothing else. This, I feel is somewhat lacking in completeness since there could be other entries in the second defendant's account books. There was a meeting held between Aljeffery and the accountant who prepared the second defendant's accounts before it was sent to Yeo & Co for auditing. Apparently, the source documents used to prepare the accounts of the second defendant were different. Limited to this evidence, I have no option but to come to a conclusion that the audited accounts of the second defendant for 1997 to 1999 represent the true state of financial affairs of the second defendant.

[121] Sometime in 1996, Telagam and one Punkothal were appointed directors of the second defendant. Later, they became shareholders on 16 September 1998 with 10,000 shares each. Then on 27 November 1997, Moses was also appointed a director of the second defendant. The admission of these three (two as directors and shareholders and the third as only a director) was approved by board resolutions duly approved and signed by the plaintiff. Aside from these, for the two who became shareholders, their share certificates were also signed by the plaintiff.

[122] Against this background, I shall first proceed to deal with the complaints of the plaintiff.

(1) *Utilising money from the second defendant for his personal use, being excessive and was an unfair advantage to the plaintiff*

[123] In encl 107 the plaintiff gave details of monies drawn by the first defendant from the account of the second defendant. The amount is about RM23,000. It is from the statement of accounts prepared by Aljeffry from source documents which is limited to monies paid into and out of the second defendant's bank account. No particulars for these entries were advanced to this court. They could have been director's fees and allowances of which the plaintiff also enjoyed. Without specification one cannot say that the first defendant had misused his position as a director in the second defendant to draw excessively from the second defendant's account for the benefit of himself or had taken unfair advantage of the plaintiff. This accusation of the plaintiff is therefore unsubstantiated.

(2) *The first defendant derived secret profits/benefits by reason of his connection with the second defendant, had possession of the second defendant's property and converting the property of the second defendant into his personal property and own use*

[124] There is no merit in this claim. The first defendant had explained to this court of all his transactions involving the second defendant and I find them reasonable.

(3) *The first defendant has not rendered true accounts of the second defendant*

[125] Again I cannot comprehend this claim when the accounts of the second defendant were audited each year. Further, there is no item in the plaintiff's particulars to show which specific matters that were deliberately left unaccounted by the first defendant in the second defendant's account.

(4) *Failing to display good faith towards the plaintiff in all dealings and transactions pertaining to the second defendant*

[126] Again, to repeat, all transactions of the first defendant involving the second defendant had been explained by the first defendant and they are accepted by this court. Further, the second defendant's actions were governed by its memorandum and articles of association. There were board meetings with resolutions properly passed and approved. Further, there were the audited accounts. I detected no bad faith on the part of the first defendant towards the plaintiff in his dealings pertaining to the second defendant.

(5) *Taking complete control of the funds of the second defendant to the complete exclusion of the plaintiff as well as misappropriating and/or mismanaging it*

[127] This is indeed a wild accusation. The plaintiff was not only in charge of the second defendant's account but also a co-signatory of all cheques drawn from the account of the second defendant.

(6) *Deliberately refusing to allow the plaintiff from enjoying the benefits and privileges normally enjoyed as a director of a company*

[128] Obviously the plaintiff has forgotten that she had been issued shares in the second defendant, enjoyed director's fees and payment of certain bills by the second defendant where she was the sole beneficiary.

(7) *Authorising payments to third parties from the account of the second defendant.*

[129] Except for two items which I have not touched on, others have been dealt with previously where I have accepted the explanation of the first defendant.

[130] Now in relation to the lifting of fixed deposits in the name of the second defendant without just cause, evidence shows that the money from these fixed deposits accounts were used to repay the second defendant's overdraft facilities. So there is nothing sinister about this withdrawal. If the second defendant was encumbered with liabilities, then such liabilities should be settled particularly when the major directors and shareholders in the company were no longer on good terms. Further, in view of the plaintiff terminating the partnership there was no longer any necessity for the second defendant to 'protect' the partners in the partnership for which the second defendant was acquired.

[131] Then as regards to the sale of the second defendant's assets to a company known as Van Capital Sdn Bhd for RM35,000 when the book value was RM206,629, and that this purchaser was controlled by a friend of the first defendant, I would say that book value is not a good indicator of the actual market value of things. Book value of the goods is only for accounting purposes but actual market value of the goods is the actual price that can be secured in an open market. The plaintiff has not advanced any evidence to indicate what the actual market value of these goods was. Thus, in the absence of this, it is difficult for me to come to a conclusion that the first defendant had deliberately induced the second defendant to sell these assets of the second defendant cheap in order to defeat the plaintiff's interest. Further, I would also like to point out that the person who controlled the purchaser company, one Dato Rahman Hamzah, is no stranger to the second defendant for it was from him that the second defendant purchased most of what was sold. So it was only natural that this buyer would be prepared to take back what was sold, of course at a reduced price for wear and tear and depreciation.

(8) *Showing disrespect to the plaintiff as a co-director of the second defendant*

[132] As stated earlier, the first defendant may have been hash on the plaintiff at times but as a director in the second defendant she could opt to resign from this position and sell her shares to avoid such unpleasantness. Further, I do not believe that there is a cause of action by one director against another for disrespect.

(9) *Allocation of additional shares in the second defendant*

[133] There is no proof that the first defendant was allotted shares without consideration. Further, I must also point out that before the second defendant issued shares there must have been board approval and the plaintiff was a member of the board of the second defendant.

(10) *Additional directors and shareholders*

[134] Again the plaintiff has forgotten that she was the one who signed the resolution approving these persons to be additional directors and two of them as shareholders. The signature of the plaintiff is also found in the share certificates issued to those two shareholders. As they were approved by her to be members of the second defendant she cannot now turn round to accuse the first defendant of having committed a wrong for admitting them. She should have known that each shareholder in a company has certain rights and the first defendant had exercised his rights the way he desired. So did the plaintiff.

(11) *Inducing the plaintiff to sign all the resolutions of the second defendant to the detriment of the plaintiff*

[135] I view this complaint with suspicion for reason that the plaintiff is an advocate and solicitor with a number of years standing in the Bar. She is also, as I have said, a mature woman. I find it hard to accept that she could be threatened by the first defendant to sign all the resolutions of the second defendant to the detriment of herself. I hold the view that she knew what she was doing at all material times and this excuse was invented to escape responsibility for things she had voluntarily committed.

(12) *Withholding the plaintiff's salary/drawings/profits as a director and shareholder of the second defendant*

[136] The plaintiff must be aware that payment of dividend in a company can only be made upon approved by the company. If a shareholder desires dividend for his share in the company then he must make requisition for this to the company. After this, it is for the board of directors of the company to decide whether to declare dividend. The same goes for director fee. It is not for an individual director or shareholder to say whether dividends should be announced or director fee increased. As there was no such requisition and the first defendant was not legally in a position to accommodate the plaintiff then this claim is unsubstantiated.

(13) *Failure of the first defendant to pay the plaintiff for her share of monies due from the second defendant*

[137] I do not detect any debt due by the second defendant to the plaintiff. On the contrary, the plaintiff is indebted to the second defendant for the sum she acknowledged as a debt due to the second defendant. As no debt is found due by the second defendant to the plaintiff there is no ground to support this claim.

Conclusion

[138] Based on the reasons aforesaid, this alternative prayer is refused.

(e) *A declaration that the first defendant had acted mala fide in exercising his discretion as a co-director in the second defendant and be condemned to pay damages to the plaintiff*

[139] I find no evidence to support this claim. It is hereby dismissed.

(f) *That the corporate veil of the second defendant be lifted and the second defendant be declared a partnership and is the alter-ego of the Ramiah, Mages & Partners. In the alternative, the second defendant be wound up on the ground that is just and equitable to do so*

[140] As I have stated earlier, there is no reasonable ground to lift the corporate veil. The plaintiff was well aware of the objective for the setting up of the second defendant and went in, as I have said, with eyes wide open. She had used the second defendant to protect herself from personal liabilities when the need arose. Also, there must have been tax benefits enjoyed by her. Now just because she wishes to rid the first defendant from any venture they share she is asking this court to revert back to status quo. I am afraid that this court will not lend her a hand when she was fully aware of the separate legal status of the second defendant before she went in and then used this to her advantage.

[141] As for the plaintiff's alternative request to wind up the second defendant, she has not indicated to this court by which provision of the Companies Act she is relying on. If it is under s 218(1) of the Companies Act 1965, then I am afraid that based on the circumstances of this case there is no just and equitable ground to do so. No doubt this court can order the winding up of the second defendant when there is lost of confidence and mutual trust among the shareholders, but I must be reminded that the

plaintiff and the first defendant are not the only members in the second defendant. There are also other shareholders (as disclosed). Their interest must also be taken into account. Having considered this, I find that there is no just and equitable reason wind up the second defendant under s 218 of the Companies Act.

[142] The plaintiff of course can also request for a winding up of the second defendant under s 181 of the Companies Act. But she seemed to have abandoned this when she announced that prayer (b) against the second defendant is academic.

(g) *An order that the affairs of the second defendant be wound up*

[143] For reasons stated above, I refuse this prayer of the plaintiff.

(h) *For the purpose aforesaid, that all necessary accounts and inquires be taken and made*

[144] This prayer is for a consequential order upon prayer (g) being granted. Since prayer (g) is refused, this prayer is automatically rejected.

(i) *Interest at the rate of 8% per annum to be paid by first defendant to the plaintiff on the judgment sum up to realisation once the damages and loss of earnings and claims are verified by the receivers and managers and this honourable court verifies the total amounts payable to the plaintiff by the defendants*

[145] As I have found against the plaintiff this claim for interest is refused.

(j) *That the defendants to bear the costs of this claim*

[146] On the contrary, as the plaintiff has failed in her substantive claim against both the defendants, I order her to pay costs of this action to both the defendants.

COUNTERCLAIM OF THE FIRST DEFENDANT

[147] The first defendant has counterclaimed the plaintiff for:

(1) damages for breach of the partnership agreement with interest and costs;

(2) that the plaintiff do deliver 'a list of all clients correspondences and other documents, papers and record which may have been prepared by the plaintiff or have come into the plaintiff possession whilst the plaintiff was a partner of the first defendant'.

[148] Based on evidence adduced, there is nothing to support this first defendant's counterclaim that the plaintiff had likewise breached the partnership agreement. This counterclaim, in my view, is more of retaliation of the plaintiff's claim. As it is not substantiated, it is dismissed.

[149] As for the second prayer in the counterclaim, I do not think it is fair for the plaintiff to disclose what is requested since there is no evidence to support a finding that she took away files of the partnership which she is not entitled. Thus, this request of her is unfair.

[150] Accordingly, I dismiss this counterclaim with costs to be paid by the first defendant to the plaintiff.

Claim and counterclaim dismissed with costs.

Reported by Ashgar Ali Ali Mohamed